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8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 MARK STEINES AND STEINES
13 ENTERTAINMENT, INC.,

14 Plaintiffs,

15 v.

16 CROWN MEDIA UNITED STATES,
17 LLC, CROWN MEDIA HOLDINGS,
INC., AND CITI TEEVEE, LLC,

18 Defendants.

Case No. 2:18-cv-09293 CJC (FFMx)

**DEFENDANTS' APPLICATION
FOR LEAVE TO FILE UNDER
SEAL PORTIONS OF
DECLARATIONS AND
EXHIBITS IN SUPPORT OF
DEFENDANTS' MOTION TO
DISQUALIFY PLAINTIFFS'
COUNSEL**

Judge: Hon. Cormac J. Carney

*[Filed concurrently with Declaration
of Michael Wertheim; Redacted
Declarations and Exhibits Proposed
to Be Filed Under Seal; Unredacted
Declarations and Exhibits to Be Filed
Under Seal; and [Proposed] Order re
Application for Leave to File Under
Seal]*

Complaint filed: September 20, 2018
First Amended Complaint filed:
September 26, 2018

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Local Rule 79-5.2.2, Defendants Crown Media United States, LLC, Crown Media Holdings, Inc. and Citi TeeVee, LLC (“Defendants”) hereby apply for leave of Court to file portions of the following documents, submitted in support of Defendants’ Motion to Disqualify Plaintiffs’ Counsel, under seal:

1. Declaration of Howard M. Knee in support of Defendants’ Motion to Disqualify (“Knee Declaration”) (specifically Paragraphs 5, 6 and 14.)
2. Exhibit A to the Knee Declaration (the “Legal Consulting Agreement”)
3. Exhibit B to the Knee Declaration (the “First Installment Check”)
4. Declaration of Deanne R. Stedem in support of Defendants’ Motion to Disqualify (“Stedem Declaration”) (specifically Paragraphs 6, 19, 20 and 21)

I. INTRODUCTION

Good cause exists to file the limited portions of the Knee Declaration, Legal Consulting Agreement, First Installment Check and the Stedem Declaration under seal, because these documents contain confidential information that is: (1) protected by the attorney-client privilege; (2) protected by the mediation privilege; (3) subject to confidentiality agreements; (4) sensitive and confidential business information; and (5) private information of non-parties. See Declaration of Michael Wertheim (“Wertheim Decl.”) ¶5. Defendants request that the Court permit them to file the above-referenced documents under seal to preserve any privilege (including the attorney-client privilege and mediation privilege), confidentiality and avoid any waiver of privilege by having to bring Defendants’ Motion to Disqualify Plaintiffs’ Counsel. *Id.* ¶6.

Counsel for Defendants informed Plaintiffs’ counsel of Defendants’ intent to seek leave to file the Knee Declaration, Legal Consulting Agreement, First

1 Installment Check and Stedem Declaration under seal, and provided the reasons for
 2 doing so. Wertheim Decl. ¶3, Ex. 1. Plaintiffs' counsel has indicated they will
 3 oppose the application to seal. *Id.*

4 **II. ARGUMENT**

5 **A. Good Cause Exists To Seal The Proposed Documents**

6 The decision to seal records is left to the Court's discretion. *Hagestad v.*
 7 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*
 8 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). When determining whether to
 9 seal court records, "the district court must balance the competing interest of the
 10 public and the party seeking to seal judicial records." *In re Midland Nat. Life Ins.*
 11 *Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012). While the
 12 public enjoys a general right to inspect judicial records and documents, a party may
 13 provide "sufficiently compelling reasons" that override the public policy favoring
 14 disclosure, and a court may seal such documents where "good cause" is shown that
 15 specific prejudice or harm will result if the materials are not filed under seal. *Id.*;
 16 *see also Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir.
 17 1992).

18 Defendants' desire to preserve the sanctity of privileged and confidential
 19 information constitutes a compelling reason that outweighs the public's interest in
 20 such information. Defendants therefore request that the Court seal portions of these
 21 documents because they refer to matters that are protected from disclosure by the
 22 attorney-client privilege, California's mediation privilege, private confidentiality
 23 agreements, as well as private business matters and private matters of non-parties.
 24 Wertheim Decl. ¶5. The matters contained in the redacted portions of the Knee
 25 Declaration, Legal Consulting Agreement, First Installment Check and Stedem
 26 Declaration are directly related to confidential matters discussed under the
 27 protections of the above-mentioned privileges and confidentiality considerations.
 28 *Id.* ¶7-14. As explained below, Defendants have established good cause for the

1 Court to seal the above-referenced documents because Defendants will suffer
 2 significant harm if the documents are unsealed and their privileged and confidential
 3 information is disclosed and accessible to the public. *Id.* ¶19. *Admiral Ins. Co. v.*
 4 *United States Dist. Court*, 881 F.2d 1486 (9th Cir. 1989) [“party will suffer . . .
 5 irreparable harm if privileged materials or communications are disclosed”].

6 **B. Protection Of Defendants’ Confidential Attorney-Client**
 7 **Communications Warrants Sealing The Proposed Documents**

8 Courts have regularly held that the sealing of court documents is appropriate
 9 and necessary when a party seeks to disclose confidential information or
 10 information protected by the attorney-client privilege and attorney work-product
 11 doctrine. *See, e.g., Stein v. Tri-City Healthcare Dist.*, 2014 U.S. Dist. LEXIS
 12 121112 (S.D. Cal. Aug. 27, 2014) and *Preston v. City of Oakland*, 2015 U.S. Dist.
 13 LEXIS 16907 (N.D. Cal. Feb. 11, 2015), relying on *General Dynamics v. Superior*
 14 *Court*, 7 Cal. 4th 1164 (1997) and *Fox Searchlight Pictures, Inc. v. Paladino*, 89
 15 Cal. App. 4th 294 (2011) (both holding that court should seal documents or
 16 proceedings when a party seeks to introduce privileged or confidential information
 17 in court); *see also* Evid. Code §954 (California’s evidentiary statute regarding
 18 attorney-client privilege).

19 Defendants entered into an attorney-client relationship with The Bloom Firm
 20 on July 17, 2017. Wertheim Decl. ¶8. The Knee Declaration, Legal Consulting
 21 Agreement, First Installment Check and Stedem Declaration contain information
 22 subject to the attorney-client privilege. *Id.* ¶¶8-14. By virtue of having to bring the
 23 Motion to Disqualify, Defendants are in the untenable position of being forced to
 24 explain to the Court why their former attorney cannot use confidential information
 25 against them, which by its very essence would otherwise require Defendants to
 26 disclose what those confidential communications were; this is precisely why the
 27 Court should allow these confidential matters to be submitted under seal, so as to
 28 preserve the confidential nature of these attorney-client communications.

1 **C. Protection Of Defendants’ Confidential Mediation**
2 **Communications Warrants Sealing The Proposed Documents**

3 Moreover, some of the matters in the Knee Declaration, Legal Consulting
4 Agreement and Stedem Declaration are protected by California’s mediation
5 privilege. Wertheim Decl. ¶¶5, 10, 11-14. As such, the communications and
6 information related to these confidential matters are privileged and confidential.
7 California Evidence Code §§ 1119, 1121, 1123.

8 **D. Protection Of Information Protected By Confidentiality**
9 **Agreements Warrants Sealing The Proposed Documents**

10 Some of the confidential information within the redacted portions of the
11 proposed documents is specifically subject to mutually-agreed upon confidentiality
12 agreements with Plaintiffs’ counsel. Wertheim Decl. ¶¶12, 13, 14, 16. Courts have
13 routinely sealed the content of confidential settlement agreements under the
14 compelling reasons standard, therefore, to the extent such documents involve
15 confidential information, particularly, as is the case here, where Plaintiffs’ counsel
16 agreed to be bound by strict confidentiality provisions, there exists a compelling
17 reason to file under seal. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307
18 F.3d 1206, 1212 (9th Cir. 2002) (“[C]ourts have granted protective orders to protect
19 confidential settlement agreements.”) (citing cases); *Hendrix v. Branton*, No. 93-cv-
20 0537, 2012 WL 2455741, at *4 (W.D. Wash. June 26, 2012) (finding compelling
21 reasons to seal confidential agreement from prior litigation because (1) the
22 agreement contained a confidentiality provision and (2) there was no overriding
23 need for the public to know the details of the agreement).¹

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27 ¹ See *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1180, 1223, n. 46
28 (recognizing overriding interest of “protection of trade secrets, protection of information within
the attorney-client privilege, and enforcement of binding contractual obligations not to disclose”).

1 **E. Protection Of Defendants’ Confidential Business Information**
 2 **Warrants Sealing The Proposed Documents**

3 Documents that contain confidential and/or proprietary business information
 4 which could “harm a litigant’s competitive standing” are generally protectable from
 5 public disclosure. *In re Electronic Arts, Inc.*, 298 Fed. App’x 568, 569 (9th Cir.
 6 2008) (“[T]he common-law right of inspection has bowed before the power of a
 7 court to insure that its records are not used . . . as sources of business information
 8 that might harm a litigant’s competitive standing.”) (quoting *Nixon v. Warner*
 9 *Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *NBC Subsidiary*, 20 Cal. 4th at 1222 n.
 10 46 (trade secrets are an overriding interest warranting protection). The documents
 11 sought to be filed under seal contain such information — public release of the
 12 information would harm Defendants’ competitive standing, and the information is
 13 appropriately filed under seal on that basis. Wertheim Decl. ¶¶18, 19.

14 **F. Protection Of Non-Party Personal Information Warrants Sealing**
 15 **The Proposed Documents**

16 Finally, Defendants request that names of certain third-parties be redacted to
 17 preserve the privacy rights of those individuals who are not parties to this action.
 18 Wertheim Decl. ¶17. Under the compelling reasons standard, the Ninth Circuit and
 19 other courts throughout the Ninth Circuit have recognized the privacy interests of
 20 third parties by sealing personnel and other identifying information from the public
 21 record. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, at *1137 (9th
 22 Cir. 2003) (“third-party medical and personnel records” should be redacted “to
 23 protect third-party privacy interests...”); *Myles v. Cty. of San Diego*, No. 15-CV-
 24 1985-BEN (BLM), 2017 WL 274829, at *2 (S.D. Cal. Jan. 19, 2017)
 25 (“[I]nformation about third parties’ personal identifying information should not be
 26 disclosed to the public.”); *Music Grp. Macao Commercial Offshore Ltd. v. Foote*,
 27 No. 14-cv-03078-JSC, 2015 WL 3993147, at *2 (N.D. Cal. June 30, 2015)
 28 (“Disclosure of identifying information would infringe the privacy rights of [third

party individuals], which constitutes a compelling reason for sealing.”). Based on this well-established case law, Defendants’ limited request to redact information related to personnel issues of non-party litigants justifies filing of the above-referenced documents under seal.

G. A Substantial Probability Exists That Defendants Will Be Prejudiced If The Documents Are Not Sealed

Defendants’ privileged and confidential information, as well as financial and competitive interests would be placed in significant jeopardy if the information contained at in the proposed sealed documents was made publicly available. Wertheim Decl. ¶19. Such disclosure would prejudice Defendants by forcing them to disclose privileged and confidential information that was always meant to remain confidential. Public knowledge of Defendants’ privileged and confidential information would undermine its legal strategies and negatively affect its competitive advantage in the marketplace. *Id.*

H. Defendants’ Proposed Sealing Is Narrowly Tailored

Defendants’ request is limited in scope, and narrowly tailored to protect privacy interests, balanced against the presumption of public access in civil cases. There exist no less restrictive means to protect the confidential information, as this information is vital to Defendants’ Motion to Disqualify Plaintiffs’ Counsel. Wertheim Decl. ¶20. Defendants have redacted only the necessary portions to preserve confidentiality and privilege, but the information is otherwise necessary to establish the merits of Defendants’ Motion to Disqualify Plaintiffs’ Counsel.

III. CONCLUSION

Defendants respectfully request that the Court grant the application to file the Knee Declaration, Legal Consulting Agreement, First Installment Check and Stedem Declaration under seal.

1 Dated: December 5, 2018

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4 By: /s/ Timothy J. Long

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